IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 5460 of 1999

For Approval and Signature:

HONOURABLE MR.JUSTICE R.S.GARG

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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RAVJIBHAI PRABHUDAS PATEL - Petitioner(s)
Versus
ADDITIONAL COLLECTOR AND COMPETENT AUTHORITY U.L.C. - Respondent(s)

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Appearance :

MR BS PATEL for Petitioner(s) : 1,MRS RANJAN B PATEL for Petitioner(s) : 1,
MR DIPEN DESAI, ASSTT. GOVERNMENT PLEADER for Respondent(s) : 1,

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CORAM : HONOURABLE MR.JUSTICE R.S.GARG

Date : 01/05/2007

ORAL JUDGMENT

1. Shri B.S.Patel, learned counsel for the petitioner; Shri Dipen Desai, learned AGP for

the State. Parties are finally heard.

2. The petitioner, being aggrieved by the order dated 31.5.99 [Annexure:E to the petition] whereunder the Competent Authority has refused to issue No Objection Certificate under the provisions of Section 21 of the Urban Land Ceiling Act or even otherwise has refused to grant No Objection Certificate for raising certain construction, is before this Court.

3. The short facts necessary for disposal of the present writ application are that the petitioner is the owner of the land of surveys no. 350 and 330 admeasuringn 1 Acre and 1 Guntha and 2 Acres and 16 Gunthas situated at Manjalpur, Vadodara. On 14.8.76, the petitioner made an application in form-5 under Section 21 of the Gujarat Urban Land [Ceiling & Regulation] Act, 1976 seeking permission to develop the land in accordance with Section 21 of the Act. During pendency of the said application, the State Government/Competent Authority proceeded under Sections 8 and 9 of the Urban Land [Ceiling & Regulation] Act. A final order came to be passed

on 29.11.82. Copy of the said order has not been filed by the petitioner in these proceedings. Appeal No. 1680 of 1994 came to be dismissed by the appellate authority holding that possession of the land in dispute was already taken by the State Government through its Competent Officer, therefore, the appeal deserved to be dismissed. It is to be noted that the order dated 6.11.85 was not challenged before any court or authority as the parties felt content. However, Ravjibhai, son of Prabhudas and Dahyabhai, son of Prabhudas challenged the very same earlier order dated 20.1.83 passed by the Competent Authority, in the very same Tribunal on the ground that their application filed under Section 21 was pending consideration and as such final order could not be passed.

4. The appellate authority, after referring to the facts observed that in view of the earlier dismissal order, another appeal by the appellant should not normally be entertained. After observing so, to oblige the appellant before it, it observed that there were certain special

circumstances which deserved consideration. It observed that the impugned order was ab initio void having been passed disregarding the pendency of application filed under Section 21 of the Act; that the above said fact was not brought to the notice of the appellate authority when Appeal No. 1680 of 1984 was decided and that the said appellant Prabhudas had already expired. It further observed that as regards computation of excess vacant land made by the Competent Authority, there was no valid ground to interfere with the same except that the decision on the application under Section 21 of the Act should have been taken before passing the order. It disposed of the Appeal No.217/87 with a direction that the appeal stands allowed to the extent that the Competent Authority to dispose of the application filed by the declarant under Section 21 of the Act, if the scheme stands sanctioned, suitable modification should be carried out in the impugned order and if the scheme stands rejected, the impugned order will not require any modification. Appeal

No. 7/86, which related to compensation was disposed of with the directions that it should also be governed by the outcome of the decision made on application under Section 21 of the Act. It is to be noted that dismissal of the earlier Appeal No. 1680/84 was not challenged by the petitioner before any forum and similarly, decision made on 5.4.88 in Appeals No. 217/87 and 7/86 was also not challenged before any further forum, which would simply mean that on one side, the first dismissal would stare in the eyes and at the second occasion, order in the interest of the petitioner only would be that if the application under Section 21 of the Act stands allowed, then, final order passed by the Competent Authority would be amended.

5. On 6th June, 1988, the petitioner had made some application and thereafter, he yet made another application requesting the authorities to decide his application filed under Section 21 of the Act. It is again to be noted that copy of the said application has not been filed nor annexed

in these proceedings, but only reminder has been annexed. When particular documents are not filed in the Court, then, the Court must presume that the party not filing the documents is not relying upon the contents of the documents or the Court may presume that production of such documents would have worked against the interest of the party if the said documents were filed by the said party. In either of the case, non-filing of the said documents, that is, the earlier order passed in Appeal No. 1680/84, copy of the application seeking exemption under Section 21 of the Act would speak bad and would act bad against the interest of the petitioner.

6. The petitioner's application filed under Section 21 was disposed of on 31.5.99. Shri B.S. Patel, learned counsel for the petitioner vehemently submitted that the said application filed under Section 21 of the Act was never decided. A perusal of the order [Annexure:E] would show that the petitioner's prayer for grant of No Objection Certificate in relation to the scheme was not granted. Once such prayer was rejected,

then, it would simply mean that the prayer made in the application was rejected.

7. Shri Patel further submitted that the petitioner had filed yet another application seeking No Objection Certificate and as the order dated 31.5.99 simply refused to grant No Objection Certificate, it could be presumed that the application filed under Section 21 of the Act is still pending. If this is the understanding of the petitioner, then, he was not required to rush to this Court, but he could have made an application to the government for yet another decision on his application filed under Section 21 of the Act. During course of the arguments, Shri Patel, learned counsel submitted that from the counter affidavit filed by the respondent, it would clearly appear that the respondent has made a categorical admission that the petitioner's application filed under Section 21 of the Act was never decided. I asked Shri Patel to read one single line to that effect from the counter affidavit dated 2nd February, 2000, after reading with Shri Patel, I am unable to find a

single line in the counter affidavit which says or suggests that application filed under Section 21 of the Act was kept pending. In fact, in para-3, the respondent has only said that the order of the Urban Land Tribunal and the order of the Competent Authority stood confirmed. They had also said that the petitioner had no right to file the petition as he ceased to be the owner of the land with effect from 1.1.85. The respondent did not say that it did not pass any orders on the application filed under Section 21 of the Act. Shri Patel thereafter referred to para-7 of the counter affidavit, which simply says that as per the Repeal Act, 1999, from 30.3.99, all proceedings shall stand abated at the stage where those were. It is also stated that in case on hand, possession remains with the government and therefore, there is no substance in the petition. There is no averment in para-7 to show, suggest or prove that the State Government/Competent Authority did not decide the petitioner's application filed under Section

21 of the Act.

8. The order dated 31.5.99 says that as the scheme was not sanctioned before repeal of the Act, a certificate of No Objection could not be issued. It further said that in view of the fact that the action taken under Sections 10[1], 10[3] and 10[5] has been completed and petitioner was dispossessed of on 1.1.85, No Objection Certificate could not be issued.

9. A perusal of Sections 20 and 21 of the Act would make it clear that the holder of the land would be entitled to make an application under Sections 20/21 of the Urban Land Ceiling Act, he is entitled to float a scheme which may be approved by the concerned authority. A scheme can be carried out on the land which continues to be in possession of the holder of the land.

10. Be that as it may. The fact remains that the order passed by the Competent Authority on 29.11.82 was confirmed by the Urban Land Tribunal on 20.1.83 in Appeal No. 1680/84. That final order would finally decide the right, title, interest and authority of the parties.

11.It is further to be seen that same order dated 29.11.82 was again challenged in Appeal No. 217/87 almost after four years. The Urban Land Tribunal did not consider the effect of delay and even without condoning the delay, entered into the merits of the matter and passed an order which contains all the abnormalities. On one side, the appellate Tribunal says that the appeal was not maintainable, but at the same time, it entertained it. On one side, it said that the earlier order stands confirmed, but it still passes an order saying that on grant of application filed under Section 21 of the Act, the first order passed by the Competent Authority can be modified. On one side, he says that in view of the earlier dismissal, the other appeal was not maintainable, but without converting the proceedings into review or so, he still proposes to interfere. On one side, he says that the earlier order would bind the parties, but at the same time, he grants an opportunity in favour of the holder or his legal representatives that the order would be subject

to outcome of the application filed under Section 21. If the Court had no jurisdiction, then, for no reason, it could modify or amend the earlier order. It would be trite to say that misplaced sympathy and displaced anger always lead to bad law. In the present case, sympathy projected by the Tribunal, in fact, had created all the problems. The appellate authority, if it had no jurisdiction to interfere in the matter, then, it could not find fault with the earlier orders nor could it say that the final order passed by the Competent Authority would be subject to certain restrictions. In para-7, the Urban Land Tribunal, despite holding that computation of excess land as decided by the Competent Authority does not call for any interference, at the same time, grants liberty in favour of the legal representatives of the holder/declarant to challenge the earlier order which had attained finality. The order dated 5.4.88 is not void ab initio or void, in fact, it is a nullity. When nullity is brought to the notice of the High Court, then, the High Court,

to oblige a party or to help someone, cannot close its eyes and have approach of an ostrich. The moment an illegality is brought to the notice of the High Court, the High Court is required to strike upon it with the sword of its authority.

12. The order dated 5.4.88 runs contrary to the canons of justice and is patently illegal and bad. It is passed by the authority which had no jurisdiction to pass such order. When a provision of law or Statute provides for an appellate forum and such forum is exploited once, then, very same party cannot re-utilize the same forum, because, it has already exercised its rights. If the earlier order dated 20.1.83 has attained finality and the same was not challenged before any appellate forum, then, the Urban Land Tribunal had no jurisdiction to dilute the effect of the order or modify the effect of the said order. I would be justified in holding that the order dated 15.4.88 could not reserve any liberty in favour of the petitioner to obtain orders on their

application filed under Section 21 of the Act.

13. Assuming for a minute that the order dated 5.4.88 can still help the petitioner, then too, the petitioner would not be entitled to any order under Section 21 in his favour, because, the petitioner lost ownership, lost possession and the property vested free from all encumbrances in the State on 1.1.85. Once the property is vested in the government and the petitioner is dispossessed, then, the Urban Land Tribunal could not interfere in the matter and say that final order would be subject to the outcome of the application filed under Section 21 of the Act.

14. As a faint attempt, it was submitted that on 1.1.85, when possession was taken, the declarant had already expired and as such, possession could not be taken. Unfortunately, this factual dispute was not raised before any authority and dispossession of the petitioners was never challenged before any authority. Legal representatives/successors, if lost their possession illegally, then, they were required

to challenge the action of their illegal dispossession. In these collateral proceedings, they would not be allowed to widen the scope of this writ by throwing challenge to their dispossession.

15. Taking the matter from any angle, I am of the opinion that the petitioner could not make out a case for any interference. The petition deserves to and is accordingly dismissed with costs of Rs.10,000/- [Rupees Ten Thousand] to be paid by the petitioner to the State Government. Rule is discharged. Interim relief, if any, is vacated.

[R.S. GARG, J.]

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